

Message Text

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E.O.11652: N/A

TAGS: OCON, COE

SUBJECT: COUNCIL OF EUROPE ON LIABILITY OF PRODUCERS

REF: STATE 2037

1. SUMMARY - COUNCIL OF EUROPE EXPERTS MET IN STRASBOURG JANUARY 7-11 TO DISCUSS A PRELIMINARY DRAFT CONVENTION ON LIABILITY OF PRODUCERS FOR DAMAGES SUFFERED DUE TO DEFECTS IN THEIR PRODUCTS. EVENTUAL ADOPTION OF CONVENTION IN PRESENT FORM COULD HAVE IMPORTANT INDIRECT EFFECTS ON US EXPORTS TO EUROPE. END SUMMARY.

2. SESSION ATTENDED BY REPRESENTATIVES OF 12 OF 17 COUNCIL MEMBER GOVERNMENTS, AS WELL AS OBSERVERS FROM SEVERAL NON-MEMBER STATES AND ORGANIZATIONS SUCH AS EEC, UNIDROIT, INTERNATIONAL INSURERS AND INTERNATIONAL CHAMBER OF COMMERCE. AMCONS STRASBOURG ATTENDED AS US OBSERVER. TECHNICAL DISCUSSIONS ON DRAFT CONVENTION OF OCTOBER 73 RESULTED IN NEW DRAFT TO BE RECONSIDERED BY EXPERTS IN JUNE AND PROBABLY AGAIN IN NOVEMBER. NEW DRAFT LEAVES GREATER DISCRETION TO NATIONAL LAW, BUT OTHERWISE IS ESSENTIALLY IDENTICAL TO ITS PREDECES-SOR. TEXT IN ENGLISH AND FRENCH POUCHED TO EUR/RPE FOR DISTRIBUTION TO INTERESTED OFFICES IN DEPARTMENT OR ELSEWHERE
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IN WASHINGTON.

3. FINAL CONVENTION AS PRESENTLY CONCEIVED, WILL INCLUDE TWO SECTIONS. FIRST, ON PRODUCER LIABILITY FOR PERSONAL INJURY CAUSED BY DEFECTS IN THEIR PRODUCTS, HAS BEEN SUBJECT OF FOUR EXPERTS MEETINGS TO DATE AND WILL NOT BE COMPLETED BEFORE END OF 1974. DISCUSSIONS ON SECOND SECTION, COVERING LIABILITY FOR MATERIAL DAMAGES , MAY BEGIN LATER THIS YEAR AND PROMISES TO BE MORE DIFFICULT THAN WORK TO DATE. IT IS MOST UNLIKELY THAT CONVENTION WILL BE READY FOR SIGNATURE BEFORE 1976.

4. DRAFT CONVENTION DEFINES "PRODUCERS" AS, INTER ALIA, "IMPORTER". IMPORTERS OF US GOODS WOULD THEREFORE BEAR SAME POTENTIAL LIABILITY WITH REGARD TO THEIR AMERICAN GOODS AS EUROPEAN PRODUCERS FOR THEIR OWN PRODUCTION. THEY WOULD PRESUMABLY INSIST UPON ADDITIONAL GUARANTEES FROM AMERICAN SUPPLIERS, TO OBTAIN OR MINIMIZE THEIR PERSONAL LIABILITY UNDER CONVENTION.

5. WE UNDERSTAND THAT US LAW ON LIABILITY OF PRODUCERS IS GENERALLY IN ADVANCE OF EUROPEAN LAW. THIS WAS AT LEAST IMPRESSION OF SEVERAL DELEGATES WHO TOOK US LAW AS A REFERENCE POINT FOR THEIR INTERVENTIONS. THE MOST CONTROVERSIAL ELEMENT OF DRAFT CONVENTION, HOWEVER, SEEMS TO GO CONSIDERABLY BEYOND US PRACTICE. CONVENTION WOULD SHIFT BURDEN OF PROOF REGARDING PRODUCT DEFECTS FROM THE INJURED PARTY TO THE PRODUCER. THIS IS PROBABLY THE ELEMENT OF THE DRAFT CONVENTION OF GREATEST LONG TERM IMPORTANCE TO U.S.

6. COMMENT - IF ABOVE NON-LEGAL INTERPRETATION IS BORNE OUT BY WASHINGTON EXAMINATION OF DRAFT TEXT, WE SUGGEST THAT US MAY WISH TO FOLLOW COUNCIL'S DELIBERATIONS MORE CLOSELY. ONE MEANS OF DOING SO WOULD BE THROUGH THE AMERICAN CHAMBER OF COMMERCE WHICH SEEMINGLY HAS INTERESTS AT STAKE.

7. INTERNATIONAL CHAMBER OF COMMERCE IS A REGULAR OBSERVER TO STRASBOURG DISCUSSIONS. ACCORDING TO INTERNATIONAL CHAMBER LEGAL DIRECTOR PENARD, THE ORGANIZATION WOULD WELCOME AN INTEREST AND INPUT BY THE AMERICAN CHAMBER. THE DRAFT CONVENTION WILL BE DISCUSSED BY THE INTERNATIONAL CHAMBER

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AT A MEETING IN PARIS JANUARY 31, WHEN A WORKING GROUP WILL BE FORMED TO STUDY ITS IMPLICATIONS IN DEPTH.WOODS

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